

FILED

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RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 UNITED STATES OF AMERICA,)

13 Plaintiff,)

14 v.)

15 ALTON VANEK,)

16 Defendant.)
17

No. CR-04-40114 PLJ

PLEA AGREEMENT

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19 I, ALTON VANEK, and the United States Attorney's Office for the Northern District of
20 California (hereafter "the government") enter into this written plea agreement (the "Agreement")
21 pursuant to 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:
22

The Defendant's Promises

23 1. I agree to plead guilty to count one of the captioned information charging me with
24 Bribery of a Public Official, in violation of 18 U.S.C. § 201(c)(1)(A). I agree that the elements of
25 the offense and the maximum penalties are as follows: (1) I directly or indirectly gave something
26 of value to a public official; (2) for or because of any official act performed or to be performed
27 by the public official; and (3) I acted knowingly.

28 a. Maximum prison sentence

2 years

PLEA AGREEMENT

- | | | |
|----|---------------------------------|-----------|
| b. | Maximum fine | \$250,000 |
| c. | Maximum supervised release term | 1 year |
| d. | Mandatory special assessment | \$100 |

2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the following facts are true: I am the owner and operator of American Craftsman (previously known as Al Vanek Contractor) located at P.O. Box 1085, Concord, California, 94522. From approximately 1999 to approximately 2001, I paid approximately \$60,000 to Columbio Reyes, the Paint Shop Supervisor at the U.S. Department of Energy Lawrence Berkeley National Laboratory (DOE laboratory), University of California (UC), Paint Shop. These bribes were made over the course of 1999 through 2001 and included more than one bribe. In return for the money I paid him, Reyes provided me with information regarding the bid amounts to submit on the same contracts. I then used this information to insure that I won the paint contract.

3. I agree to give up all rights that I would have if I chose to proceed to trial, including the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from the government; and to pursue any affirmative defenses and present evidence. I also agree to waive any right to have facts that determine my offense level under the Sentencing Guidelines, including facts that support any specific offense characteristic or other enhancement or adjustment, alleged in an indictment and found by a jury. See Blakely v. Washington, 2004 WL 1402697 (U.S. June 24, 2004). Instead, I agree that the Court will find the facts that determine my sentence under the Sentencing Guidelines by a preponderance of the evidence.

4. I agree to give up my right to appeal my conviction, the judgment, and orders of the Court. I also agree to waive any right I may have to appeal my sentence.

5. I agree not to file any collateral attack on my conviction or sentence, including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim that my constitutional right to the effective assistance of counsel was violated.

6. I agree not to ask the Court to withdraw my guilty plea at any time after it is

1 entered, unless the Court declines to accept the sentence agreed to by the parties.

2 7. I agree that the 2000 Sentencing Guideline Manual applies in this case and that
3 the Sentencing Guidelines should be calculated as follows, and that I will not ask for any other
4 adjustment to or reduction in the offense level or for a downward departure of any kind:

- | | | | |
|----|----|---|-----------|
| 5 | a. | Base Offense Level, U.S.S.G. § 2C1.2(a): | 7 |
| 6 | b. | Specific offense characteristics: | |
| 7 | | Offense involved more than one bribe, § 2C1.2(b)(1) | 2 |
| 8 | | Offense involved more than \$40,000, § 2C1.2(b)(2)(A) | 5 |
| 9 | c. | Acceptance of responsibility: | <u>-2</u> |
| 10 | | (If I meet the requirements of | |
| | | U.S.S.G. § 3E1.1) | |
| 11 | f. | Adjusted offense level | 12 |

12 8. I agree that an appropriate disposition of this case is as follows: 5 months
13 *(however, if funding is available for halfway house confinement)*
14 *5 months home detention* *make MCB* imprisonment, 5 months halfway house, 1 year of supervised release (with conditions to be fixed
15 by the Court), a fine as determined by the Court, and \$100 special assessment. I agree that I will
16 make a good faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or
17 after sentencing, I will, upon request of the Court, the government, or the U.S. Probation Office,
18 provide accurate and complete financial information, submit sworn statements and give
19 depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as
20 a result of my crimes, and release funds and property under my control in order to pay any fine,
21 forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

22 9. I agree not to commit or attempt to commit any crimes before sentence is imposed
23 or before I surrender to serve my sentence. I agree that, regardless of any other provision in this
24 agreement, the government may and will provide to the Court and the Probation Office all
25 information relevant to the charged offenses or the sentencing decision. I also agree that the
26 Court is not bound by the Sentencing Guidelines calculations above, the Court may conclude that
27 a higher guideline range applies to me, and, if it does, I will not be entitled, nor will I ask, to
28 withdraw my guilty plea. I also agree not to violate the terms of my pretrial release (if any);
intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the

1 government; or fail to comply with any of the other promises I have made in this Agreement. I
2 agree that, if I fail to comply with any promises I have made in this Agreement, then the
3 government will be released from all of its promises in this agreement, including those set forth
4 in paragraphs 12 through 14 below, but I will not be released from my guilty plea.

5 10. I agree that this Agreement contains all of the promises and agreements between
6 the government and me, and I will not claim otherwise in the future.

7 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
8 District of California only, and does not bind any other federal, state, or local agency.

9 The Government's Promises

10 12. The government agrees to move to dismiss any open charges pending against the
11 defendant in the captioned information at the time of sentencing.

12 13. The government agrees not to file or seek any additional charges against the
13 defendant that could be filed as a result of the investigation that led to the captioned information.

14 14. The government agrees that the appropriate sentence in this case should be as set
15 forth in paragraph 8 above, unless the defendant violates the agreement as set forth in paragraph
16 9 above.

17 The Defendant's Affirmations

18 15. I confirm that I have had adequate time to discuss this case, the evidence, and this
19 Agreement with my attorney, and that she has provided me with all the legal advice that I
20 requested.

21 16. I confirm that while I considered signing this Agreement, and at the time I signed
22 it, I was not under the influence of any alcohol, drug, or medicine.

23 17. I confirm that my decision to enter a guilty plea is made knowing the charges that
24 have been brought against me, any possible defenses, and the benefits and possible detriments of
25 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no

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3 one coerced or threatened me to enter into this agreement.

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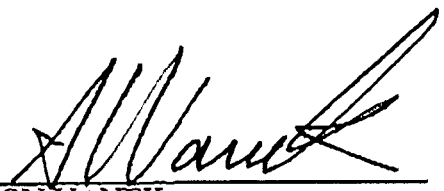
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Dated:

9/9/04

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ALTON VANEK
Defendant

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KEVIN V. RYAN
United States Attorney

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Dated:

9/9/04

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MAUREEN C. BESSETTE
Assistant United States Attorney

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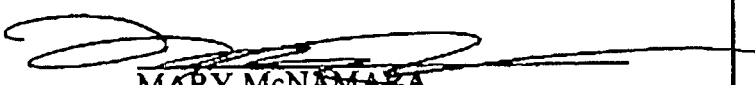
I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead guilty is knowing and voluntary.

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Dated:

9/9/04

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MARY McNAMARA
Attorney for Defendant

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